

# EXHIBIT U

**In The Matter Of:**  
*Newel Rubbermaid, Inc. vs.*  
*Kirsch Lofts, LLC*

---

*Arthur Siegal*  
*June 13, 2016*

---



**Bingham Farms/Southfield • Grand Rapids**  
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw

*Original File SIEGAL\_ARTHUR.txt*  
*Min-U-Script® with Word Index*

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 1  UNITED STATES DISTRICT COURT IN THE WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION  NEWELL RUBBERMAID, INC., Plaintiff, vs. Case No. 1:15-cv-00597 RJJ Hon. Robert J. Jonker  KIRSCH LOFTS , LLC, Defendant.  _____  The Deposition of ARTHUR SIEGAL, Taken at 27777 Franklin Road, Southfield, Michigan, Commencing at 10:11 a.m., Monday, June 13, 2016, Before Nora Morrissy, CSR-2642.	Page 3  1 TABLE OF CONTENTS 2 3 Witness Page 4 ARTHUR SIEGAL 5 6 EXAMINATION 7 BY MR. MORE: 7 8 9 EXHIBITS 10 11 Exhibit Page 12 (Exhibits attached to transcript.) 13 14 DEPOSITION EXHIBIT 1 9 15 DEPOSITION EXHIBIT 2 9 16 DEPOSITION EXHIBIT 3 33 17 DEPOSITION EXHIBIT 4 57 18 DEPOSITION EXHIBIT 5 68 19 DEPOSITION EXHIBIT 6 82 20 DEPOSITION EXHIBIT 7 84 21 DEPOSITION EXHIBIT 8 98 22 DEPOSITION EXHIBIT 9 98 23 DEPOSITION EXHIBIT 10 98 24 DEPOSITION EXHIBIT 11 98 25 DEPOSITION EXHIBIT 12 98
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 2  APPEARANCES:  JOSHUA R. MORE Schiff Hardin 233 South Wacker Drive Suite 6600 Chicago, Illinois 60606 312.258.5769 jmore@schiffhardin.com  Appearing on behalf of the Plaintiff.  DENNIS W. BILA II Bila & Associates, PLLC 4270 Cottontail Lane Harbor Springs, Michigan 49740 231.838.5678 bila@bilalaw.com  Appearing on behalf of the Defendant.  ALSO PRESENT: Scott Bosgraaf, Carl Gabrielse	Page 4  1 DEPOSITION EXHIBIT 13 99 2 DEPOSITION EXHIBIT 14 101 3 DEPOSITION EXHIBIT 15 124 4 DEPOSITION EXHIBIT 16 160 5 DEPOSITION EXHIBIT 17 196 6 DEPOSITION EXHIBIT 18 209 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

Page 21	Page 23
<p>1 see or did he identify the documents that he was going 2 to send you?</p> <p>3 <b>A. I believe he identified the documents.</b></p> <p>4 Q. And at any point in time did you ask for additional 5 documents?</p> <p>6 <b>A. I may have asked if there were additional documents</b> 7 <b>that ought to be provided. I don't remember if I</b> 8 <b>asked for specific documents.</b></p> <p>9 Q. Okay. So, you relied upon Mr. Bosgraaf to identify 10 what documents you should review in preparation for 11 your expert reports?</p> <p>12 <b>A. With respect to the factual underpinnings of the case,</b> 13 <b>yes.</b></p> <p>14 Q. Okay. Do you have a list of the documents that 15 Mr. Bosgraaf provided to you?</p> <p>16 <b>A. I do not have a list. Certainly I could prepare one.</b> 17 <b>The -- I would say at least for the initial report I</b> 18 <b>believe all of the appendices were all of the</b> 19 <b>documents that were provided. I'm not positive of</b> 20 <b>that but I believe that to be the case.</b></p> <p>21 Q. That was going to be my next question. Thank you.</p> <p>22 <b>A. Sure.</b></p> <p>23 Q. And then in connection with your second expert report 24 it contains the same appendices, correct, you're 25 incorporating by reference the same documents?</p>	<p>1 Lofts was capable of conducting the intended 2 redevelopment?</p> <p>3 <b>A. I believe I asked Mr. Bosgraaf that question and</b> 4 <b>that's what I was told.</b></p> <p>5 Q. What do you mean by capable of conducting the intended 6 redevelopment?</p> <p>7 <b>A. That they had both the experience and the economic or</b> 8 <b>fiscal wherewithal to be able to finance and build the</b> 9 <b>project.</b></p> <p>10 Q. Did you ask to see any supporting financial documents?</p> <p>11 <b>A. No, I did not.</b></p> <p>12 Q. Then you go on to say that Kirsch Lofts was prevented 13 from redeveloping the property by Newell Rubbermaid 14 because of contamination of the property.</p> <p>15 What is your basis for concluding that</p> <p>16 Kirsch Lofts was prevented from redeveloping the 17 property by Newell Rubbermaid?</p> <p>18 <b>A. Again I believe that was told to me by Mr. Bosgraaf</b> 19 <b>and it was my understanding that was to be an</b> 20 <b>assumption for the purposes of this expert report.</b></p> <p>21 Q. That was an assumption Mr. Bosgraaf asked you to make?</p> <p>22 <b>A. Either he or his counsel.</b></p> <p>23 Q. What do you mean by prevented?</p> <p>24 <b>A. That they were unable to conduct the development and</b> 25 <b>proceed with their planned development because there</b></p>
Page 22	Page 24
<p>1 <b>A. That's correct.</b></p> <p>2 Q. So, for your second report it relies upon the same set 3 of documents as your first report?</p> <p>4 <b>A. As well as referring to the documents that Mr. Barr</b> 5 <b>appended, that's right.</b></p> <p>6 Q. And the documents that you refer to in your second 7 report that Mr. Barr appended -- attached to his 8 expert report, the first time you saw those documents 9 was in connection with Mr. Barr's report?</p> <p>10 <b>A. Except for the ones that were appended to my original,</b> 11 <b>yes, that's correct.</b></p> <p>12 Q. Thank you. Besides working on this case, have you 13 ever done any other work for Mr. Bosgraaf?</p> <p>14 <b>A. No.</b></p> <p>15 Q. Besides asking Mr. Bosgraaf if there were any other 16 documents in general, do you recall ever asking for 17 any specific information from him?</p> <p>18 <b>A. As I think I testified before, we certainly did</b> 19 <b>discuss the documents that were provided to make sure</b> 20 <b>that I understood what they were and the context of</b> 21 <b>those documents and the content of those documents.</b></p> <p>22 Q. Okay. Let's turn to Page 2 of Siegal 2. I'd like you 23 to look at item G.</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. What is the basis for your conclusion that Kirsch</p>	<p>1 <b>were environmental issues that needed to be resolved</b> 2 <b>that had not been resolved.</b></p> <p>3 Q. Okay. Let's look at item I on Page 2.</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. What development time line are you referring to?</p> <p>6 <b>A. I'm not sure I understand the question.</b></p> <p>7 Q. So, item I reads the earliest date I expect the first 8 phase of the project to be completed is September 9th, 9 2019.</p> <p>10 What's the basis for that?</p> <p>11 <b>A. Well, I think I may have asked the question of</b> 12 <b>Mr. Bosgraaf, my understanding was that the project</b> 13 <b>was to be developed in three phases and I think I</b> 14 <b>asked the question how soon do you think you could</b> 15 <b>complete the entire project assuming you got started</b> 16 <b>relatively quickly, and how quickly would you be able</b> 17 <b>to finish the first phase.</b></p> <p>18 I don't know that I broke it down into 19 phases one, phase two and phase three. I think I 20 asked about completing the entire project and 21 completing phase one of the project, and I believe 22 that I was provided that date by I think it was a 23 rough estimate but I think it was an estimate from 24 Mr. Bosgraaf.</p> <p>25 Q. And if you turn the page over you'll see paragraph I</p>

1 respect to tax credits or not? 2 <b>MR. MORE:</b> You'll have a chance to ask him 3 -- 4 <b>MR. BILA:</b> I'm not going to let him answer 5 -- 6 <b>MR. MORE:</b> You're not going to let him 7 answer a question relating to a publication he issued 8 recently, 2014, June 2nd -- 9 <b>BY MR. MORE:</b> 10 Q. I'm sorry, what's the date on this? 11 A. I believe it was December 30th of 2013. 12 <b>MR. MORE:</b> December 30th, 2013, that's 13 discussing how brownfield tax credits and incentives 14 are being used by developers? 15 <b>MR. BILA:</b> If you ask him questions about 16 how brownfield tax credits are being used by 17 developers, I'm okay with that. If you're going to 18 ask him about the construction of projects or whether 19 as an environmental lawyer he has an opinion as to 20 whether or not construction can proceed, I'm going to 21 say no. 22 <b>MR. MORE:</b> I've moved off that line of 23 questioning, you already instructed him not to. I'm 24 asking specifically about the language he uses in this 25 article and what it means.	Page 37  1 following sentence which I believe is the third 2 sentence reads this makes sense because for all 3 incentives available at the end of the day if you 4 rehab a building that no one wants to occupy, the 5 incentives available won't make the difference. 6     What incentives are you referring to there? 7 A. Certainly I'm referring to things like the brownfield 8 TIF. I may have been referring to the brownfield MBT 9 credits although I believe at that time the credit 10 program had been -- that the state was no longer 11 approving new brownfield MBT credits. Certainly I was 12 also thinking about state grants, state loans, those 13 kind of programs that are available. 14 Q. Why does it not make sense to rehab a building that no 15 one wants to occupy? 16 <b>MR. BILA:</b> I'm going to object to form and 17 foundation. Again it's outside the scope for what 18 this witness was retained. 19 <b>BY MR. MORE:</b> 20 Q. Go ahead. 21 A. I guess in short developers can go out and rehab 22 buildings or sites but if they are in locations that 23 no one wants to be in ultimately the incentives, the 24 credits, all those programs are not going to make the 25 product or the project necessarily profitable.
Page 38  1 <b>MR. BILA:</b> As long as all your questions 2 assume they relate specifically to tax credits 3 discussed in one and two and nothing more or nothing 4 less. 5 <b>BY MR. MORE:</b> 6 Q. What do you mean by a small project versus a large 7 project? 8 A. I can't necessarily give you a specific measurement, 9 but certainly as I'm talking about large projects I'm 10 talking about if you read the rest of the post, the 11 Packard plant in Detroit which is a very large piece 12 of land, very large factory, many environmental 13 issues. The Uniroyal site which has been sitting 14 waiting for development for some 30 years, again, a 15 large site, significant contamination, much 16 complexity, and I noted that DTE, this is again 17 two-and-a-half years ago, had sold a plant in Michigan 18 to a developer and again a large facility, again, I 19 couldn't tell you acreage of any one of those three, 20 and acreage alone is not necessarily a determining 21 factor of whether I would consider something to be low 22 hanging fruit, and I'm putting that in quotes, or not. 23 It's just one factor to take into consideration. 24 Q. Thank you. And you explained some of the other 25 factors. The second sentence -- I'm sorry -- the	Page 40  1 Developers go into these projects to make money and 2 yes, you can get certain dollars back but generally a 3 developer who is developing a site needs to make sure 4 that the project is occupiable, and that's true for 5 nonbrownfield sites as well as brownfields, the point 6 is that the brownfield credits don't make such a 7 significant difference that most developers are going 8 to say yeah, I'll have a property that will sit there 9 and be valueless because no one wants to be there even 10 though I've invested all this money and I've gotten 11 some incentives or credits or, you know, other 12 incentive-like programs to support my development. 13 Q. The following paragraph that begins with so, would you 14 just read that to yourself, please? 15 A. Okay. 16 Q. What do sound economies have to do with a state's 17 brownfield programs? 18 <b>MR. BILA:</b> Again before you answer I'm 19 going to object to form and foundation. This is 20 outside the scope of what he's been asked to opine on 21 in this case and I'm going to tell him not to answer 22 at this point. 23 <b>MR. MORE:</b> So, he's not giving an opinion 24 as to when brownfields tax credits are available? 25 <b>MR. BILA:</b> That's not the question.

Page 53	Page 55
<p>1 longer is accepting those applications, they are no 2 longer granting those pre-approvals, so, this is going 3 to be a bit sketchy, but basically you would have a 4 conversation with your client and their environmental 5 consultant and maybe somebody from their construction 6 folks or their engineer, their architects, somebody 7 who is going to be able to quantify a cost involved in 8 the project.</p> <p>9 First to confirm the property is eligible, 10 that it qualifies for the program. Might research the 11 community and the statute to determine what level of 12 credit because it could vary depending on where the 13 properties were, and also timing.</p> <p>14 You'd sit down and look -- quantify the 15 costs that you thought would be eligible, and confirm 16 with the client make sure they include them if they 17 were not certain about whether or not they should be 18 included, you suggest that they be included because 19 it's difficult to amend these things, fill out the 20 necessary paperwork, perhaps have some conversations 21 with local and state folks to make sure that the 22 project was one that would be well received and then 23 complete the paperwork and submit it.</p> <p>24 Q. Okay. From your answer I understand you to be saying 25 typically you working in conjunction with the</p>	<p>1 A. Yes, you would ask that question, I would ask that 2 question as well.</p> <p>3 Q. And why would you ask those two questions?</p> <p>4 A. Statute provided that costs are not eligible if they 5 are effectively not borne by the developer.</p> <p>6 Q. The actual brownfield tax credit that is awarded, is 7 that based on the estimates set forth in the 8 brownfield tax credit application?</p> <p>9 A. It's based on the actual expenses incurred subject to 10 the approval grant, the pre-approval grant which are 11 based on those costs. Again if you go over what's 12 been pre-approved unless you get your approval amended 13 which is no easy feat, you're limited based on the 14 estimates.</p> <p>15 If you spend less, then you get less. Let 16 me just be clear, I'm saying if you spend less than 17 the estimated amount, the pre-approved amount, then 18 you receive less based on the formula prescribed in 19 the statute.</p> <p>20 Q. That situation you just described which is that the 21 application sets a ceiling for the amount of credit 22 one can be awarded in essence, does that create a 23 scenario where there's an incentive to overestimate 24 costs in a brownfield application?</p> <p>25 <b>MR. BILA:</b> Objection. Form.</p>

Page 54	Page 56
<p>1 contractor, environmental consultant and/or the 2 developer are making the determination as to which 3 costs are eligible investments, is that right?</p> <p>4 <b>A. Which costs would be eligible investments, yes.</b></p> <p>5 Q. And ultimately is that a determination that is 6 typically made by you?</p> <p>7 <b>A. I think -- as I said I think it's a joint discussion</b> <b>8 but if there's a cost that I think is not eligible, I</b> <b>9 would say so.</b></p> <p>10 Q. Okay. And what level of information do you need or 11 detail of information do you need to make that 12 determination as to what costs are eligible 13 investments?</p> <p>14 <b>A. Basically you ask questions regarding what the costs</b> <b>15 are going to be and what they are going to be used for</b> <b>16 and you compare it to the statutory standards.</b></p> <p>17 Q. Do you inquire as to the source of funds to pay for 18 those costs?</p> <p>19 <b>A. I typically would not ask if my clients had their</b> <b>20 financing prearranged if that's what you're asking.</b></p> <p>21 Q. Do you inquire as to whether or not any of those costs 22 are going to be paid for by a grant?</p> <p>23 <b>A. Yes, typically you would ask that question.</b></p> <p>24 Q. Do you typically inquire as to whether or not those 25 costs are going to be reimbursed from a TIF?</p>	<p>1 A. Typically my experience is to say to my clients you 2 should estimate reasonably but if you're in a range, 3 could be this much, it could be that much, you should 4 estimate to the high end.</p> <p>5 <b>BY MR. MORE:</b></p> <p>6 Q. Thank you. And that is to ensure the greatest 7 probability of receiving as much tax credit that's 8 available?</p> <p>9 <b>A. That's correct.</b></p> <p>10 Q. Am I correct that no one knows for certain what the 11 actual brownfield tax credit will be until the project 12 is complete?</p> <p>13 <b>A. Subject to the limit in the pre-approval, yes, I would</b> <b>14 say that's correct. You know what it won't be more</b> <b>15 than but you don't know if it will be that amount or</b> <b>16 less depending on what gets spent.</b></p> <p>17 Q. Okay. Do you have any experience with calculating 18 brownfield tax credits once the project is complete?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Do you have any experience with identifying eligible 21 investments -- I'm just going to give you the statute 22 reference here. MCL 2008.1437 after a project is 23 complete.</p> <p>24 <b>A. Are you asking me if I've evaluated whether</b> <b>25 expenditures qualify as eligible expenses?</b></p>

Page 157	Page 159
<p>1 the assumed two percent rate is and as a result there 2 would be -- there could be I guess I should say 3 additional tax capture as a result of that after such 4 bump and it would not necessarily show up in the table 5 right away because this table assumes that there's 6 going to be tax abatements on the commercial and the 7 residential portion for ten years.</p> <p>8 So, while you might see an increase in 9 value in the left-hand column, that may not show up 10 particularly as an increase in tax capture in the 11 right-hand column right away.</p> <p>12 Q. Would your opinion change if the six million dollar 13 investment contemplated in Exhibit E to Exhibit 15 14 were to occur in 2012 as opposed to 2010?</p> <p>15 A. I'm assuming the investment and the improvement in the 16 property and its value correlates to the increase -- 17 the three million dollar increase in taxable value 18 shown in the table in 2011, so the question is if 19 there was no investment or improvement in the property 20 such that its value increased until 2016 --</p> <p>21 Q. Sure.</p> <p>22 A. Then I would expect you would see the taxable value 23 and the increase in taxes and the total tax capture 24 all be deferred so you could effectively slide the 25 table down so that you'd see the bump, the three</p>	<p>1 of his? 2 A. I was not given documentation on that. 3 Q. As you sit here today do you feel that you were 4 provided all of the documentation necessary to form 5 your opinions? Strike that. I'm going to ask it this 6 way. 7 After issuing your first report -- let me 8 ask it this way. 9 Were you provided sufficient documents to 10 issue your first expert report? 11 A. I think I was, yes. I think upon getting Mr. Barr's 12 report he raised a couple of interesting hypotheticals 13 and a couple of interesting points. Frankly I caught 14 a math mistake going through my report, it's a small 15 one, but it's on the next page or page after that on 16 the table that was included, but for the most part I 17 think I was provided adequate information but I think 18 Mr. Barr raised a couple of interesting points that I 19 thought merited consideration, and as you pointed out 20 resulted in my second report, my supplemental report 21 actually reducing two of the three numbers that I 22 calculated that added up to the total estimated loss. 23 Q. That's as a result of Mr. Barr's report providing you 24 with additional information that Mr. Bosgraaf 25 withheld?</p>
Page 158	Page 160
<p>1 million dollar bump in 2017 and that taxable year, and 2 I assume also all of the other -- the OPRA and NEZ 3 would similarly be slid down so effectively, literally 4 you could probably just simply where it says 2011 just 5 add five to everything all the way down.</p> <p>6 Q. Yes. Same would hold true if it turns out that in 7 fact Kirsch Lofts didn't expect to complete the six 8 million dollars in improvements until 2012, you would 9 just add then two to each of these numbers, correct?</p> <p>10 A. Correct.</p> <p>11 Q. For the year?</p> <p>12 A. Correct.</p> <p>13 Q. You'd just shift --</p> <p>14 A. Give or take, but yes, that's right. I don't know 15 that you'd see the slight taxable value increases in 16 2009 and 2010 the way you did, but yes, that's what I 17 would do.</p> <p>18 Q. Did you do anything to confirm that the OPRA and NEZ 19 tax abatements were approved?</p> <p>20 A. I did not independently verify them. I spoke to 21 Mr. Bosgraaf who told me that he believed that they 22 would be in place at the time that the development was 23 completed and that they would run from that period 24 forward.</p> <p>25 Q. Did he give you evidence to substantiate that opinion</p>	<p>1 A. No, I wouldn't say it was additional information. I 2 think he raised the opportunity and I discussed it 3 with Mr. Bosgraaf of getting a five-year extension 4 which was something that we have not talked about 5 previously and to be conservative I thought it was 6 worth including, and Mr. Barr raised the issue 7 regarding the actual amount of the transactional costs 8 on the new market tax credits that we discussed 9 previously and those were included as well. 10 Q. Okay. 11 A. Other than that, no, I don't believe I was withheld 12 any information that was pertinent or necessary to my 13 reaching my conclusions. 14 Q. I'd like to hand you now what we'll mark as Exhibit 15 16. 16 MARKED FOR IDENTIFICATION 17 DEPOSITION EXHIBIT 16 18 3:54 p.m. 19 BY MR. MORE: 20 Q. I've handed you what is now marked as Exhibit 16. It 21 is the Act 381 work plan. Have you seen this document 22 before? 23 A. I have. 24 Q. Did you consider this document in forming any of your 25 opinions?</p>

1 additional years at the back end? 2 A. Yeah. 3 Q. Okay. So, what I'd like you to do is can we take a 4 break, I want to use the restroom. I'd like to give 5 you an opportunity to correct your table. 6 A. Sure. 7 (Recess taken at 4:28 p.m.) 8 (Back on the record at 4:35 p.m.) 9 BY MR. MORE: 10 Q. Mr. Siegal, we took a break so you could confer and 11 evaluate whether the tables set forth on Exhibit 9 12 should be revised to properly or to consistently track 13 the pattern outlined in the brownfield plan as we 14 discussed in my prior questioning. 15 A. Yes. 16 Q. What have you determined? 17 A. Well, two things. One is, and this seems to be sort 18 of a consistent issue with this -- with this schedule 19 that is attached to Exhibit 15 or the schedules is 20 that as Mr. Barr pointed out they started too early, 21 and as Mr. Bosgraaf has explained to me on more than 22 one occasion, the NEZ and the OPRA tax abatement would 23 not kick in until he had a certificate of occupancy. 24 I don't think that's properly reflected in the 25 original reimbursement schedule.	Page 181  1 2028 and 2029 which are shown here as 2030 and 2031 if 2 that makes sense. 3 So, what you'd see is less tax capture in 4 the beginning but more at the back end. As a result I 5 don't think there's a significant swing. There is a 6 swing of what would be captured and what would be 7 reimbursed assuming that you as this does that you get 8 the five-year extension. 9 There's a lot of math here. 10 Q. And you haven't done any of that math, correct? 11 A. I have not done any of that math. I relied on the 12 table that was provided. Its embedded errors with the 13 one I corrected which was the start year as Mr. Barr 14 pointed out, I think are still here and as you pointed 15 out I did not include the NEZ or OPRA for the full ten 16 years because I effectively assumed that that's where 17 we started -- that 2020 was effectively 2009 and 18 you're right, it should have been 2011. 19 Q. Okay. I don't disagree that the TIF schedule and the 20 reimbursement schedule attached to Exhibit 15 has a 21 series of errors embedded in it. I think there may be 22 more than what you just articulated. 23 Nonetheless, you've chosen to rely on those 24 two tables and base your opinion solely upon those two 25 tables.
Page 182  1 Just like Mr. Barr identified that the 2 original reimbursement schedule would have started in 3 2009 or, I'm sorry, tax -- the TIF table would have 4 started in 2009 and gone through 2038, I think that 5 there's an error embedded in the original schedules 6 that were prepared back in 2009 where they assumed 7 that the NEZ would kick in in 2009 or 2008 and that 8 the OPRA would as well, and as you pointed out 9 correctly, this is not an error, this is in here, that 10 the tax rate would go up in -- or the taxes collected, 11 excuse me, and captured would go up in 2011 through 12 2038. 13 You are I think correct that the -- if I 14 was going to -- and given the opportunity I would 15 correct my table to reflect that the first year of TIF 16 capture would be 2020 and I would basically delete 17 years 2020 and 2021 in my table and I would add two 18 more years at the back end, calculate it out what -- 19 estimated what those should be dollar-wise in terms of 20 capture and reimbursement, but similarly there would 21 be a reduction in the table which I have not 22 calculated to reflect the NEZ and the OPRA because 23 you'd have to start in years 2020 as well and since we 24 have now taken two years off, you would have to add 25 two years of NEZ and OPRA at the back end in years	Page 182  1 My question to you is now how would your 2 opinion change? This section here is a million some 3 odd dollar opinion. 4 A. Yes. 5 Q. Okay? And you're relying upon these tables. You've 6 acknowledged that two more years should be added and 7 in your original opinion, your supplemental opinion 8 you determined that this TIF schedule and 9 reimbursement schedule associated with Exhibit 15 were 10 sufficient to rely upon. 11 A. Yes. 12 Q. I don't want to -- I want you to amend your opinion to 13 reflect the error that you've admitted occurred which 14 is that the significant -- the 25 thousand 672 dollars 15 or the total annual total of 25 thousand 713 dollars 16 should have occurred in 2020, not 2022 and you should 17 be adding to the end of your table two more years, and 18 let me just point you to those two years and see if I 19 get it right, okay? 20 According to the reimbursement schedule 21 which forms the basis for your table on Page 9 year 22 2042 coincides with year 2031, is that correct? 23 A. Yes. 24 Q. Okay. So, if we added two more years as you've 25 indicated would be appropriate assuming, you know,

Page 185	Page 187
<p>1 making the same assumptions as when you formed this 2 opinion, we would add 168 thousand and 413 dollars, 3 correct? 4 A. Yes. 5 Q. And we should add 171 thousand 881 dollars, correct? 6 A. That's correct. 7 Q. Let's just do the math. Have you already done the 8 math? 9 A. I have. 10 Q. Wonderful. Tell me now is it your opinion -- tell me 11 what the math is. 12 A. First of all interestingly enough I don't think I even 13 called this to anyone's attention previously, the two 14 percent figure which is supposedly what's embedded in 15 here is actually more than two percent as far as I can 16 tell, it's 2.05 percent or something like that which 17 is -- accounts for a small discrepancy, but basically 18 if you take the two years which is 168 thousand 413 19 dollars and 171 thousand 881, you add them together, 20 by my math that's 340 thousand 294 dollars more of 21 additional tax capture. 22 Q. And, therefore, the damages that you estimate could be 23 available associated with the brownfield tax increment 24 financing should be reduced by an additional 340 25 thousand 294 dollars, correct?</p>	<p>1 Q. Not I would have, you agree it should be 2027? 2 A. I agree. You have two more years where you would not 3 have the capture of 85 -- I'm sorry -- 129 thousand 4 and 131 thousand at those levels, you'd be capturing 5 them at approximately close to half of that amount. 6 Q. Now I think I understand what you're saying. Because 7 the NEZ and OPRA occur within a ten-year period. Once 8 we shift to these numbers to properly reflect the 9 assumptions you've made, you have to also adjust the 10 NEZ and OPRA. 11 A. Correct. 12 Q. Do you have sufficient information to do so? 13 A. Not while I'm sitting here, no. 14 Q. Do you have -- was it -- was sufficient information 15 provided to you that would enable you to do that? 16 A. I think I would have to get additional information on 17 exactly how the NEZ and OPRA were calculated. 18 Q. So, as we sit here today, am I correct then that your 19 brownfield TIF opinion is incorrect, it needs to be 20 revised? 21 A. I think it does need to be revised, yes. 22 Q. And it's just flat out wrong? 23 A. It's not accurate. I don't know that it's flat out 24 wrong. 25 Q. I'm sorry. That was an exaggeration. It's not</p>
Page 186	Page 188
<p>1 A. No, because you have to take into account the NEZ and 2 OPRA abatements which apply to an extra two years as 3 well. 4 Q. Where in this schedule did you ever take into account 5 the NEZ and the OPRA abatements? 6 A. They are embedded in the numbers. If you look at the 7 top of the table, the reimbursement schedule, it says 8 with NEZ and OPRA. 9 Those are assumed here as well and you can 10 see that in 2018 to 2019 there's a significant uptick 11 in the local and school tax increment captured. 12 That's as a result of the NEZ and OPRA peeling off. 13 Q. You accounted for that, that's in your schedule 14 currently occurring in the draft which we know the 15 dates are all wrong, but on Page 9 that occurs for 16 2029 and 2030, you've already accounted for that. 17 A. But if you are starting -- what was 2022 for my -- if 18 you are starting with 2020, the NEZ and OPRA don't 19 kick in until you have a certificate of occupancy. 20 So, there's two years of additional 21 abatement because if you count through those number of 22 years, you get to as you pointed out to 2029, that's 23 one, two, three, four, five, six, seven, eight years. 24 So, in what I had as 2029 which you would 25 have as 2027 --</p>	<p>1 accurate. I appreciate that. Correct? 2 A. Correct. 3 MR. MORE: Counsel, do you plan on 4 submitting another expert report on this opinion? 5 MR. BILA: We'll have to talk about, but 6 that would be my guess. 7 MR. MORE: I'm going to reserve then the 8 right -- 9 BY MR. MORE: 10 Q. If I asked you questions about your TIF opinion, it 11 would be about an opinion that is inaccurate, correct, 12 an opinion that you want -- it's an opinion that is 13 incorrect? 14 A. Well, the math needs to be adjusted. The points in 15 the opinion relating to the process I think are 16 largely -- not largely, I think are completely 17 accurate which is, if I may, relates to the five-year 18 extension which may or may not happen which is a 19 possibility and the number of years of capture I think 20 are correct. 21 Q. Okay. I appreciate that. Then let's go forward and 22 then we'll deal with the numbers if we need another 23 deposition, and maybe we'll do it at the end, I'll 24 reserve the right on that piece should you supplement 25 your reports to provide a new table, okay?</p>

<p>1     <b>MR. BILA:</b> And to the extent your experts 2     that we've deposed ever decide to correct their 3     reports to accurately reflect them, I trust that you 4     will give us the opportunity to redepose them?</p> <p>5     <b>MR. MORE:</b> Yeah, to the extent someone 6     corrects a word like increase or decrease, that's 7     obviously not something we'll talk about. I think --</p> <p>8     <b>BY MR. MORE:</b></p> <p>9     Q. Let me ask you this, Mr. Siegal, would you consider 10    this to be a material change in the estimation of the 11    dollar amount that should be awarded Mr. Bosgraaf?</p> <p>12    A. <b>I have to do the math but I think, yeah, it's not</b> 13    <b>inconsequential.</b></p> <p>14    <b>MR. MORE:</b> Okay. So, if we had the same, 15    we can then discuss it.</p> <p>16    <b>MR. BILA:</b> Perfect.</p> <p>17    <b>BY MR. MORE:</b></p> <p>18    Q. You note that a five-year extension could be available 19    if applied, however, it appears that you are only 20    applying a four-year extension, four years from the 21    date the capture first occurs.</p> <p>22    Why not five years?</p> <p>23    A. <b>Well, the reason for that is that the statute provides</b> 24    <b>that you can get a -- the beginning date of capture of</b> 25    <b>the tax revenues won't begin more than five years</b></p>	<p>Page 189</p> <p>1     <b>January of 2013. You can't start in September of</b> 2     <b>2013, you've got to start with January. That's where</b> 3     <b>your year is lost.</b></p> <p>4     Q. A whole nine months are lost under that approach 5     whereas if you started your capture in December of 6     2013, nothing would be lost?</p> <p>7     A. <b>You're correct, but the statute says you can't start</b> 8     <b>your capture more than five years from the date of the</b> 9     <b>resolution. Five years from the date of the</b> 10    <b>resolution if you went to December of 2013, that would</b> 11    <b>-- you'd lose -- you'd be past that five-year date.</b></p> <p>12    Q. Okay. So, let's just agree for the sake of this 13    discussion September of 2013, and you get a 30-year 14    capture period, correct?</p> <p>15    A. <b>That's correct.</b></p> <p>16    Q. Well, September of 2013 30 years would put you in 17    August, correct, of 2043?</p> <p>18    A. <b>Yeah.</b></p> <p>19    Q. Right. You stop at 2042.</p> <p>20    A. <b>That's because we are starting with January of 2013.</b></p> <p>21    Q. Yeah, but now you've -- your client would incur that 22    tax benefit would be realized, and he would get 23    reimbursed on it through August of 2043, would he not?</p> <p>24    He would get at least the partial year?</p> <p>25    A. <b>No, I don't believe he would. The way I've always</b></p>
<p>Page 190</p> <p>1     <b>following the date of the resolution that adopted the</b> 2     <b>brownfield plan.</b></p> <p>3     The date of that adoption as you pointed 4     out is 2008, September of 2008 we understand.</p> <p>5     So, that means that the tax capture can't 6     begin after September of 2008. Since you don't 7     calculate taxes on a daily or monthly basis, you 8     calculate them on an annual basis, you have to start 9     with the prior year.</p> <p>10    Q. Okay.</p> <p>11    A. <b>You have to start with basically January 1st or</b> 12    <b>December 31st --</b></p> <p>13    Q. Of '09?</p> <p>14    A. <b>Well, no. You can't -- let me go back. You can't</b> 15    <b>start the capture more than five years from the date</b> 16    <b>of the resolution. The resolution is September of</b> 17    <b>2008. So, that means you can't start -- if you were</b> 18    <b>going to start on the five-year anniversary, it would</b> 19    <b>be September of 2013.</b></p> <p>20    Q. Correct. Let's --</p> <p>21    A. <b>But since you don't start calculating taxes based on a</b> 22    <b>piecemeal basis, on a pro rata basis, you do it on a</b> 23    <b>calendar year basis, you've got to start with the end</b> 24    <b>of the prior year. You've got to go back to basically</b> 25    <b>the end of 2012 and start your tax capture with</b></p>	<p>Page 192</p> <p>1     <b>seen it done it's done on a calendar basis. There's</b> 2     <b>not a pro rata, partial year calculation of this.</b></p> <p>3     <b>That's why it says it's not later than five years</b> 4     <b>following the date of the resolution.</b></p> <p>5     It doesn't say up to five years or five 6     years on an extension, and it's based on the way the 7     taxes are assessed.</p> <p>8     Q. Let's assume there's no extension and we are in 9     September of 2008. Then in reality -- it just seems 10    internally inconsistent because you've acknowledged -- 11    let's just assume September of 2008 it's approved.</p> <p>12    A. <b>Correct.</b></p> <p>13    Q. The 30 years from September of 2008 would put you in 14    August of 2039, correct?</p> <p>15    A. <b>You are starting in September of 2008? It would put</b> 16    <b>you in August of 2037.</b></p> <p>17    Q. Okay. Have you ever worked on or been associated with 18    a request for an extension?</p> <p>19    A. <b>I have not.</b></p> <p>20    Q. Okay. So, your opinions regarding how it would be 21    applied is not based on your own personal experience, 22    is that correct?</p> <p>23    A. <b>It's based on my understanding of the law.</b></p> <p>24    Q. It's based on your reading of the law?</p> <p>25    A. <b>Correct.</b></p>

<p style="text-align: right;">Page 193</p> <p>1 Q. Let's turn to your new markets tax opinion which 2 begins on Page 10 of your supplemental report, Exhibit 3 2.</p> <p>4 A. <b>Correct.</b></p> <p>5 Q. Have you ever worked on a project where new market tax 6 credits were involved?</p> <p>7 A. <b>I have worked on a couple of projects where new market 8 tax credits were considered or applied for, but I have 9 not worked on one where the credits were actually 10 granted, no.</b></p> <p>11 Q. What was your role in connection with those projects?</p> <p>12 A. <b>I was advising clients with respect to a variety of 13 incentives in putting together the packages and 14 posturing them for development and as I said those 15 projects did not go forward.</b></p> <p>16 Q. Were you advising those clients in connection with the 17 new market tax credits they were considering?</p> <p>18 A. <b>In part, yes.</b></p> <p>19 Q. And describe for me the part.</p> <p>20 A. <b>Basically they were asking me how the program worked 21 and how they would realize funds out of it and based 22 on my understanding of the program having read about 23 it, read various treasury documents and other 24 documents on it, and I think maybe one or two phone 25 calls with some folks who have been involved in the</b></p>	<p style="text-align: right;">Page 195</p> <p>1 A. <b>Probably four or five times. As I said there were two 2 projects in particular that I remember we specifically 3 had kind of a strong conversation, serious 4 conversations about.</b></p> <p>5 Q. Would you explain to me the process for obtaining a 6 new market tax credit in general terms like you did 7 the Superfund process?</p> <p>8 A. <b>This is actually more complicated as far as I'm 9 concerned than the Superfund project -- process.</b></p> <p>10 <b>Basically there are credit allocations that are made 11 by treasury that are available. They go to community 12 groups or community investment entities that then can 13 make investments in projects in urban typically 14 economically depressed areas.</b></p> <p>15 <b>As a result, there is a credit that is 16 given to them that they can utilize for -- effectively 17 in exchange for and in support of those kinds of 18 investments.</b></p> <p>19 Q. Okay. Have you ever negotiated the fees associated 20 with a new market tax credit?</p> <p>21 A. <b>No, I have not.</b></p> <p>22 Q. Have you ever negotiated the terms an a new market tax 23 credit?</p> <p>24 A. <b>No, I have not.</b></p> <p>25 Q. Have you ever seen a new market tax credit term sheet?</p>
<p style="text-align: right;">Page 194</p> <p>1 <b>program, I explained to them how it worked and how 2 would it would go forward and as I said the project 3 was never realized so we didn't pull it all the way 4 through.</b></p> <p>5 Q. Are any of your partners here at Jaffe familiar with 6 new market tax credits program?</p> <p>7 A. <b>I believe at least one other lawyer, Deb Baughman is 8 familiar with the new market tax credit program, yes.</b></p> <p>9 Q. Do you know whether or not Miss Baughman has ever been 10 involved in a new market tax credit that went beyond 11 just the initial kind of scoping phase like you were 12 describing you've been involved in?</p> <p>13 A. <b>I don't know.</b></p> <p>14 Q. Okay.</p> <p>15 A. <b>We talked about the program not in the context of this 16 case, we talked about the program previously but I 17 honestly don't know the answer to your question 18 whether or not she's taken one to fruition.</b></p> <p>19 Q. So, do I understand correctly you've never been 20 involved in a new market tax credit that has actually 21 closed?</p> <p>22 A. <b>Correct.</b></p> <p>23 Q. How many times have you been involved in providing 24 advice as to a general description of the program as 25 you've described?</p>	<p style="text-align: right;">Page 196</p> <p>1 A. <b>Yes, I have.</b></p> <p>2 Q. When?</p> <p>3 A. <b>I believe there is one on this particular project that 4 was provided to me and I think on one other -- one of 5 the other projects that didn't come to fruition I 6 believe I did.</b></p> <p>7 Q. And on that other project do you recall whether that 8 term sheet was dated?</p> <p>9 A. <b>I don't.</b></p> <p>10 Q. Do you recall whether or not it was signed?</p> <p>11 A. <b>I don't.</b></p> <p>12 Q. What is the basis for your opinion that CapFund 13 committed to fund 10.8 million dollars to the project 14 net of certain fees?</p> <p>15 A. <b>Based on the document that was appended to my report, 16 term sheet.</b></p> <p>17 Q. Let's turn to that. It's Exhibit G? F, correct?</p> <p>18 A. <b>No, it's G.</b></p> <p>19 Q. I'm going to hand you --</p> <p>20 <b>MR. MORE:</b> I'd like to you mark that as 21 Exhibit 17.</p> <p>22 <b>MARKED FOR IDENTIFICATION:</b></p> <p>23 DEPOSITION EXHIBIT 17</p> <p>24 4:59 p.m.</p> <p>25 <b>BY MR. MORE:</b></p>

<p style="text-align: right;">Page 197</p> <p>1 Q. Mr. Siegal, is this a copy of Exhibit G from your 2 report?  <b>3 A. It certainly appears to be, yes.</b>          4 Q. And is there anything other than Exhibit G that you 5 rely upon to form your new market tax credit opinion?  <b>6 A. Other than publicly available documents that I've 7 reviewed?</b>          8 Q. Yes, thank you.  <b>9 A. No, there's nothing else.</b>          10 Q. Did you have any conversations with Mr. Bosgraaf 11 regarding your new market tax credit opinion?  <b>12 A. Yes, I did. He informed me that he had worked on a 13 similar -- as I testified previously he had worked on 14 a similar project around the same time as this one 15 that did receive a new market tax credit and we had 16 discussed that as well.</b>          17 Q. And what were the -- what was the specifics of that 18 conversation?  <b>19 A. I don't remember all of the specifics. I do recall 20 him telling me about it, telling me that it was done I 21 think with the same folks with a similar letter and 22 that he proceeded with that one to fruition and that 23 the costs of compliance accounting and transactions 24 were not in the range of a million or more dollars but 25 were significantly less.</b></p>	<p style="text-align: right;">Page 199</p> <p>1 referenced in the letter. As to exact date of 2 issuance, no, I do not know.          3 Q. Can you tell me who signed the document?  <b>4 A. The document is not signed. It is set up for 5 signature by Mr. Mark McDaniel who is the president of 6 CapFund New Markets in Lansing, Michigan, and it says 7 signature page follows, so, there may be a further 8 page that was not attached that was in fact signed but 9 there is no signature on this document.</b>          10 Q. What would you expect to find on that signature page 11 follows?  <b>12 A. A signature.</b>          13 Q. Would you also expect there to be a countersignature 14 accepting the terms of this engagement?  <b>15 A. Possibly.</b>          16 Q. Would that surprise you if there were one?  <b>17 A. It wouldn't surprise me if there was a place for a 18 countersignature. Whether or not there was a 19 countersignature, I don't know.</b>          20 Q. And in fact you don't know whether or not this is a 21 letter from CapFund New Markets?  <b>22 A. I only know what it appears to be which is exactly 23 that.</b>          24 Q. Have you asked for a copy of a signature page?  <b>25 A. I asked if I had a complete copy of the letter and I</b></p>
<p style="text-align: right;">Page 198</p> <p>1 Q. So, that conversation with Mr. Bosgraaf regarding your 2 new market tax credit opinion occurred after you 3 issued your initial report?  <b>4 A. I think there was more than one conversation and I 5 think there was at least one before the -- my original 6 opinion was issued, and there was definitely one that 7 was after that one was issued and before the second 8 opinion was issued.</b>          9 Q. And the conversation relating to the costs associated 10 with the new market tax credit that you had with 11 Mr. Bosgraaf, when did that occur?  <b>12 A. I believe it was Friday.</b>          13 Q. Okay. You did not discuss the fees and costs 14 associated with the new market tax credit with 15 Mr. Bosgraaf in connection with your initial report, 16 correct?  <b>17 A. I think we discussed the fact of them but not the 18 amount.</b>          19 Q. Okay. Can you tell me what the date is of this new 20 market tax credit commitment letter as you described 21 it?  <b>22 A. Can I tell you the date that the letter was issued?</b>          23 Q. Yeah.  <b>24 A. I cannot. I can only tell you it was issued I believe 25 before July 31st of 2010 because that date is</b></p>	<p style="text-align: right;">Page 200</p> <p>1 was told this is all that was available, all that was 2 in existence or that was in hand.  <b>3 When I asked Mr. Bosgraaf is this all there 4 is, he said yes, this is all I have.</b>          5 Q. Did you evaluate whether or not the project as 6 described to you would qualify for a new market tax 7 credit?  <b>8 A. I relied on the letter which indicated that there was 9 a commitment of up to 10.8 million of their new market 10 tax credit allocation to the Kirsch Lofts project 11 based on the information that Mr. Bosgraaf apparently 12 had provided, and I believe I asked Mr. Bosgraaf what 13 information -- I don't think I asked him what 14 information he provided but I think I asked him what 15 qualified and he had told me as I testified earlier 16 that the project was a combined -- phase one in 17 particular, was combined residential and commercial 18 project, but I did not do an independent evaluation of 19 its qualifications.</b>          20 Q. Would you have expected that Mr. Bosgraaf would have 21 sought this new market tax credit -- I think you 22 testified to this, before July 1st, 2010, right?  <b>23 A. Yes. I'm saying yes, with respect to the date, not 24 with respect to the question.</b>          25 Q. Okay. And his description of the project as he</p>